

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 93-0985 CS**  
**Controlled Substance Excise Tax**  
**For The Tax Periods: 1993**

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**ISSUE**

I. **Controlled Substance Excise Tax**: Possession

**Authority**: IC 6-7-3-5; Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310 (1995).

Taxpayer protests assessment of controlled substance excise tax.

**STATEMENT OF FACTS**

The Department issued a jeopardy assessment against the taxpayer based on the taxpayer's possession of marijuana.

More facts will be provided as necessary.

I. **Controlled Substance Excise Tax**: Possession

**DISCUSSION**

Taxpayer was arrested on September 28, 1993 for the possession of marijuana, a controlled substance. Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852.

Taxpayer argues that the Department's assessment violates constitutional protections against double jeopardy. The Indiana Supreme Court addressed this issue in Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310, 313 (1995). The Court held that since the Department's assessment was first in time, it does not constitute the double jeopardy. In this

case, the Department's assessment came before the taxpayer was placed in jeopardy. The Department's assessment occurred on September 30, 1993 and the disposition of the taxpayer's criminal case occurred on July 1, 1996 when all criminal charges were dismissed. Thus, under Indiana law, taxpayer is liable for the tax.

**FINDING**

The taxpayer's protest is denied.